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NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

WORK MATERIALS NO. 17

TENTATIVE OUTLINES AND SUMMARIES OF STUDIES IN PROCESS

PART D: ADMINISTRATIVE STUDIES

Work Materials No. 17 falls into the following parts:

Part A: Industry Studies
Part B: Labor Studies
Part C: Trade Practice Studies
Part D: Administrative Studies
Part E: Legal Studies
Part F: Contributory Materials

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TENTATIVE OUTLINES AND SUMMARIES OF STUDIES IN PROCESS

In order that those working on one study may secure access to allied materials in other studies, these TENTATIVE OUTLINES AND SUMMARIES are made available for confidential use within the Division of Review.

Since these documents were prepared from work that is now in process, they are highly tentative. The outlines are the present operative tables of contents of the studies, but they are of course subject to change as the work progresses. The summaries are, in some cases, forecasts rather than actual summaries of developed manuscripts. Notwithstanding their tentative character, the documents will serve to indicate in some detail the subject matter of the studies now in process in the division. No one will think of these materials as "findings" or "reports" in the usual sense of those terms.

It is expected that these TENTATIVE OUTLINES AND SUMMARIES will result in many conferences, both formal and informal, among those working on the studies--to the ends that effective coordination of the studies may occur and duplication of effort will be reduced to a minimum.

L. C. Marshall
Director, Division of Review

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December, 1935.

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AGREEMENTS UNDER SECTIONS 4(a) AND 7(b) OF THE NATIONAL INDUSTRIAL RECOVERY ACT

Preliminary Summary of Findings

The formulation and administration of "voluntary" and "mutual" agreements, pursuant to Sections 4(a) and 7(b) of Title I of the National Industrial Recovery Act, constituted a phase of N.R.A. activity which was incidental or supplementary to the major phases of code-making and code administration.

Section 4(a) of the Act afforded broad possibilities for various types of voluntary agreements, and such possibilities were freely utilized.

The voluntary agreements promulgated under the authority granted in Section 4(a) aided to some extent in the attainment of N.R.A. objectives, the President's Reemployment Agreement having played a most conspicuous role.

The effectiveness of voluntary agreements under Section 4(a) would have been considerably enhanced but for errors of administrative procedure and policy and lack of a statutory means for enforcing compliance.

Voluntary agreements such as were provided for under the Act cannot be relied upon exclusively as a solution to the problems that gave birth to N.R.A.

The agreement provision of Section 7(b) afforded limited possibilities in comparison with Section 4(a), since it only authorized the establishment of labor standards by means of collective bargaining agreements in those industries where collective bargaining was already recognized and established.

Section 7(b) was put to considerable use under the codes for the Bituminous Coal Industry and the Construction Industry; and as a consequence the number of wage earners working under collective bargaining agreements negotiated in their behalf by labor unions increased considerably under N.R.A.

Section 7(b), by prescribing the same penalties for violation of collective bargaining agreements as were applicable to code violations, had the effect of vesting such agreements with a legal status that did not exist prior to N.R.A.

Area agreements under the Basic Code for the Construction Industry were confined to the building trades crafts, where labor was well organized, and also were limited in application mainly to metropolitan areas, where labor unions were most powerful.

Outstanding impediments to a more complete success of the area agreement program under the Construction Code were:

(a) Lack of a clearly-defined administrative policy regarding numerous questions which arose in connection with them.

(b) Failure on the part of N.R.A. to give wider encouragement to the handling of labor problems by means of collective agreements.

Section 7(b) was more extensively resorted to and achieved its greatest prominence in the Bituminous Coal Industry. The Appalachian Agreement in the latter undeniably proved a potent factor in inducing and maintaining united action on the part of labor and management, and enabled mine workers throughout the industry to secure higher wages and better working conditions than had previously been their lot.

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AMENDMENTS

Preliminary Summary of Findings

The power to amend codes was not completely set forth in the Act.

Uniformity of the use of the terms "amendment" and "amend" is important to proper administration and application of policy.

An analysis of amendments of wage and hour provisions shows that a majority increased maximum hours, but also increased minimum wages.

Practically all amendments of Code Authority provisions involved N.R.A. policy and regulations. A number of amendments dealt with the following subjects:

(a) Election of representatives of new groups and geographical sub-divisions to Code Authorities.

(b) Changes in methods of election to promote representative character of the Code Authority.

(c) Prevention of trade association domination.

Sixty-seven codes were amended as to the definition of the industry or trade or of its products, or of a member of the industry or trade.

Any new legislation should contain adequate reference to the power of amendment of codes or voluntary agreements, and its exercise by proper authority at any time.

The exercise of the power of amendment should be subject to legislative limitations of discretion, which should be declared in the form of standards.

"Amendment" should be defined in new legislation.

Delegation of the power of amendment to any lesser official than the Administrator of the Act should be legislatively prohibited.

The power of amendment by general Executive or Administrative Order should be adequately provided for.

Conditional orders of approval, as a method of amendment, should be limited to cases where the condition bears a relation to the policy of the Act.

THE BASIC CODE (ADMINISTRATIVE ORDER X-61)

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THE BASIC CODE (ADMINISTRATIVE ORDER X-61)

Preliminary Summary of Findings

The finding reached as a result of this study are:

(1) The Basic Code was unsuccessful in accomplishing its purpose - the completion of code making.

(2) Its timing was ill-advised, and it should have been initiated much earlier in the process of code-writing.

(3) A thorough, accurate and comprehensive classification of industry in advance of the endeavor would have aided the campaign materially.

The study also suggests the recommendation, in the event of new legislation contemplating the formulation of codes or similar instruments for the control of industry, that a plan for the grouping of the smaller industries under codes with identical provisions, such as was contemplated by Administrative Order No. X-61, should be formulated in the early stages. It seems reasonable to suppose that such a plan, timed in this manner, would serve as an effective complement to the condification of the major industries, and would reduce the number of individual codes to a minimum.

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CLASSIFICATION OF INDUSTRY MEMBERS

Preliminary Summary of Findings

Problems of classification arose from conflicts between definitions of industries and trades in codes. A good many cases occurred in which, because of confusion in such definitions, it was impossible to determine where some concerns belonged, and the code under which they should work.

Allied with these problems were those arising between industries and some of their individual enterprises, because of overlapping definitions of industries. Still others, closely connected with the foregoing, are treated under Multiple Code Coverage. All these complications have as their basis the lack of a comprehensive and well developed classification of industries.

There was no coordinated scheme for the writing of codes for all industries. No consistent plan was ever established to guide industries in the drafting of their definitions, and no authority was ever delegated to any officer of the N.R.A. to formulate such a plan and to put it into operation.

During the first year of its existence N.R.A. did not fully recognize the seriousness of the classification problem, and made little effort to cope with its causes. The policy adopted by the Assistant Administrative Officer for Classification Problems failed to operate successfully.

The drive to secure approved codes was effective, but only as a result of sacrificing other important considerations, essential to a consistent grouping of industries and of trades. The net effect was a series of complications of such magnitude as to threaten the breakdown of the entire program for the rehabilitation of industry.

The problem of classifying members of industries and trades will exist as long as any industrial regulation is based upon a national classification of industries. The establishment of proper policies and procedure for the handling of overlapping code provisions and multiple code coverage, however, would greatly reduce the number and complexity of these problems. Any future legislation permitting codes should:

(a) Permit the development of an industrial classification.

(b) Provide an equitable basis for establishing and assessing code administration expenses.

(c) Provide sufficient time between the approval and the effective dates of codes to permit the development of sound administrative plans.

(d) Permit all interested parties to have a voice in matters of classification prior to code or agreement approval.

(e) Require all divisions and representatives of industry to cooperate in the establishment of definitions and the coordination thereof.

Procedure in administration should be simplified to secure executive action with the least possible delay, and personnel should be selected with proper qualifications for the work at hand.

CONDITIONAL ORDERS OF APPROVAL

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CONDITIONAL ORDERS OF APPROVAL

Preliminary Summary of Findings

As a part of the process of codification it was frequently necessary to reconcile differences and to find means for adjusting the views of industrial groups to the requirements of the N.R.A; for the desirability of speed in getting industry under codes, so that people could be put back to work, was at all times in the minds of those responsible. There were cases where it seemed wise to provide means for approving codes, even though there were still differences between N.R.A. and the industries involved. Similar situations developed with respect to the administration of codes previously approved.

Among the devices used in these cases were amendments, exemptions, stays, interpretations and conditional orders of approval. This study deals exclusively with the last named type, since the others have been made the subject of separate reports.

Conditional orders of approval were applied by the President in his approval of codes, and of agreements and amendments. They were also used at times by the Administrator and by the National Industrial Recovery Board.

In addition, minor administrative actions by the Administrator and the Division Administrators, in such cases as Code Authority elections and the approval of Code Authority by-laws and of Trade Practice Complaints Committees, were also handled by conditional orders of approval.

In many cases these conditional orders departed far from the provisions of the Act in their intent and effect.

In only one instance were the conditions imposed in an order of approval assented to, and a clear order of final approval issued. This was the case of Code No. 1 for the Cotton Textile Industry. Subsequently conditions, many of which were vital and others which were important, were imposed in orders of approval; and the codes were treated as effective voluntary instruments, without specific industry assent and subsequent orders of final approval. This treatment, however, was probably legalized by the industries' tacit assent to the conditions.

Under Section 4(a) of the National Industrial Recovery Act, with respect to voluntary agreements entered into and approved by the President, no power was given to impose conditions, since the reference to Clause 2 of Section 3(a), as contained in Section 4(a), was only to the requirements thereof.

Agreements or codes under Sections 7(b) and 7(c) had the same effect as codes approved under Section 3(a). Any conditions in the approval order would therefore serve, in the writer's opinion, to render such an agreement non-effective until it was assented to, unless otherwise specifically prescribed by the President himself.

There is evidence that some conditions were inserted in orders of approval at the instance of the sponsoring committees, in order to relieve the latter of the onus of failure to satisfy the desires of some members of their industries in the code negotiations.

Beginning with Code No. 236, for the Cooking and Heating Appliance Industry, many approvals were subject to a stay of the clause providing for a waiting period on price filing.

Many codes were approved subject to conditions that certain actions be taken within a specified time limit. Where such a time limit was not met, the code thereafter was automatically in a state of suspended approval, and was legally ineffective.

Code No. 354, for the Small Arms and Ammunition Industry, provided, among other conditions in its order of approval, for the elimination of the "hedge" clause, dealing with the non-waiver of constitutional rights and non-consent to modifications, and therefore could not become effective until these conditions were assented to by the industry. To have considered the code effective under the conditions set by the order of approval would have been equivalent to the imposition upon the industry of a prescribed code. The approval of prescribed codes had not been delegated to the Administrator, but had been specifically reserved to the President by Executive Order.

Code No. 541, for the Flat Glass Manufacturing Industry, was approved by the National Industrial Recovery Board, subject to the condition that Article III, Section 2(b), providing for tolerance in hours during a peak period, be stayed. This was a vital provision of the code to certain manufacturers; and when the stay was made a condition of administrative approval, the result was apparently a prescribed code, which the Board was without delegated authority to approve. Two members of the Industry protested. The Code Committee refused to organize the Code Authority, claiming that the Code was non-effective under the law. This situation continued until the conditions were removed.

It is doubtful if any advantage in expediting the approval of voluntary codes, by the prescription of eliminations or of new or altered provisions in the orders of approval, justified the resulting confusion in administration.

The principle set forth in Section 3(a) of the Act is believed to have been sound, but its effectiveness in administration would be clarified by re-wording approximately as follows:

> "The President as a requisite precedent to his approval of a voluntary code may require the elimination, addition, or alteration of such provisions therein as in his discretion are deemed necessary for the protection .....etc."

It is essential to the administration and to the consideration of the legal status of a code that when any departure from clear-cut approval be made, the condition descriptive thereof be so worded as to avoid any possibility of an interpretation which would leave the code in a state of suspended approval, or which would act to place it in a state of legal suspension through the failure of the Industry to comply with the condition.

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DEVELOPMENT AND APPLICATION OF N.R.A. POLICIES

Preliminary Summary of Findings

The development of N.R.A. policy was hesitant and spasmodic, but continuous. The first guide to policy officially distributed was issued on October 25, 1933, practically four months after the passage of the Act and the establishment of the Administration; and this was not made available for general distribution.

The Administration's personnel, as well as that of industry, was handicapped in the early days of code-making by the lack of declared policies to guide them in considering the codes submitted.

The shifting and uncertain character of N.R.A. policy created confusion, and was one important influence in retarding the codification of industry; for an industry's desire to have a code was affected by the willingness or unwillingness of N.R.A. to approve specific proposals.

Policy-making efforts, until the creation of the policy groups, were in the hands of persons who were also performing administrative duties; and such persons are too absorbed in details to pass adequately and effectively upon policy problems. As a result, policy-making efforts were inadequate, especially in the early period of the N.R.A.

As a consequence of these findings the following recommendations are made, in case new legislation is initiated:

1. The bill should declare the legislative policy in explicit and specific terms, instead of stating the objectives broadly and vaguely, as in the National Industrial Recovery Act.

2. A policy-making unit of broad powers, with well-equipped personnel, should be immediately established, to study the legislation and to adopt promptly a strong, comprehensive and definite administrative policy for the guidance of all concerned.

3. The staff of such a policy-making unit should be composed of persons having no administrative duties.

4. A simple and direct procedure should be adopted for bringing policy problems quickly before this unit, for consideration and decision.

5. Policy, when established, should be adhered to and rigidly applied, until it has been formally changed.

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DEVELOPMENT OF THE MODEL CODE AND MODEL PROVISIONS

Preliminary Summary of Findings

Much time would have been saved and many mistakes avoided had N.R.A. adopted an official model code much earlier than it did. In the early days of code-drafting, those responsible had only Title I of the Act and N.R.A. Bulletin No. 2 for use as guides. A large number of approved codes appear to have been too hastily drafted. Ninety-nine codes were formulated and approved prior to the issuance of the Model Code of November 6, 1933.

"The Model Code for Self-Governing Industries," a document issued by the National Association of Manufacturers under date of May 31, 1933, the President's Reemployment Agreement, and the earlier approved codes were used by many industries as a basis for drafts to be submitted for approval, with insistence that similar provisions be included in their own codes.

In the earliest approved codes, provisions were permitted which were not embraced in the Model Code of November 6, 1933, and in subsequent issues, and which were likewise denied to industries for which codes were subsequently approved.

The delay in the establishment of a policy board and in the formulation of policy handicapped the development of an official model code, and caused much uncertainty in the minds, not only of N.R.A. personnel but of members of industry, as to just what provisions would be approved.

The following recommendation is made. In case any new legislation is initiated to permit the formulation and adoption of codes to govern industry, a policy board should be created at the very outset, with a personnel consisting of representatives of the government, of industry, of labor, and of the consumer, to study the legislation thoroughly, and to formulate policy for its administration, including the adoption of a model code which could be used as a guide in the drafting of proposed codes.

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DUE PROCESS OF LAW AND DELEGATION OF POWER IN THE N.R.A.

Preliminary Summary of Findings

The purpose of this study is to indicate the original legal difficulties in the National Industrial Recovery Act, and those in N.R.A. growing out of its administration. Such a subject is not susceptible of precisely stated findings. There are, for instance, many problems with respect to which it is impracticable to make a finding, or even to suggest more than a possibly preferable course of action.

The intent of the study is to set forth briefly the state of administrative law in the United States, and then to attempt a critique of N.R.A.'s general scheme in this light. Next, an effort is made to discuss technical legal problems that N.R.A. would have had to face in the courts, had not its existence been so abruptly terminated. These include jurisdiction, procedural process, and substantive due process of law. A further problem is present in the constitutional basis of the Act or "powers." Coupled with that is the problem of delegation.

The following findings are the only ones that can be made in the form of positive statements.

The subject matter of the National Industrial Recovery Act involved controversial economic and social questions. Such problems, when treated administratively, have been subject to the most careful scrutiny by the courts. N.R.A., therefore, should have foreseen the possibility of broad review, and should have attempted to meet it.

The administrative scheme of the Act had little precedent, and there was none for the extended use to which it was put. N.R.A. might reasonably have expected, on the part of the courts, the procedural requirements of Interstate Commerce cases rather than those of the Tariff Commission, under the flexible tariff provisions, upon which it partly relied.

Legal difficulties, with resort to administrative remedies such as mandamus and injunction, might have resulted from putting final authority and responsibility on the President.

The administrative approach was handicapped by haste, by inexperienced personnel, and by a failure to give early and thorough consideration to problems of administrative law.

A number of questions of jurisdiction and jurisdictional fact arose. Some were unavoidable. Others might have been more carefully handled had there been anticipation of judicial review.

N.R.A. public hearings were in the main inadequate. They often placed a premium upon speed, rather than upon the exhaustive development of a factual basis. Rules against argument and opinions were abused, even if there was any ground for prohibiting argument and opinion.

The powers of subpoena and punishment for perjury would have been useful aids to fact finding. Little attention was paid to the problem of the admissibility of evidence.

The requirement that all evidence relied upon must be in the record was not adhered to. The factual basis for findings was often inadequate, substantial evidence not having been taken. The problem of burden of proof was frequently ill-considered. The statement of the basis for action was not always as complete as could be desired.

Publication of administrative action was not complete or fully accessible. Better legal draftsmanship would have been of material assistance.

Notice was usually given quite fully. There was insufficient consideration, however, as to what persons were entitled to notice, and as to how much time ought reasonably to elapse between receipt of a notice and the date of a hearing.

Other formal actions by N.R.A. such as interpretations, amendments, exemptions and exceptions and stays, were not given as full procedural safeguards as would have been desirable.

N.R.A. did not always follow its own rules of procedure.

A possible test of substantive action by NRA on judicial review lay in the doctrine of "due process of law." That is, pricefixing and other substantive policies might have been attacked by the courts as arbitrary, capricious, and unreasonable.

N.R.A. was responsible for the actions of its own officers and for those of members of code authorities. There are a number of instances where N.R.A. failed properly to control actions of such persons.

Some of NRA's activities were undertaken without a full consideration of the implications to be drawn from decisions of the Supreme Court in related fields.

The enforcement procedure used was not in harmony with the courts' stated views, which limited enforcement methods to those expressly established in the statute.

At the time of the passage of the Act the delegation by Congress, though broad, did not seem likely to be questioned. The extreme administrative redelegations appear to have been more questionable. Redelegation of power to interested persons and to private persons not acting as public officers is open to serious legal objection.

Standards for the exercise of redelegated power were not always established; nor were they, when established, made clear, although such standards as the Act set up should have applied.

Careful consideration of all these points might have gone far to have made N.R.A. acceptable to the courts.

In addition, the following matters are worthy of serious consideration if a similar plan is ever put into effect in the future:

(a) The value of cross-examination as a testing device for evidence should not be lost sight of.

(b) Definite rules as to burden of proof would be helpful.

(c) Unnecessary delay in determining issues does not harmonize with our notions of justice.

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EXEMPTIONS AND EXCEPTIONS

Preliminary Summary of Findings

The power to grant exemptions from N.R.A. requirements was easily susceptible of abuse, and if improperly exercised it might result in complete defeat of the purposes of the legislation from which the exemption was granted.

The reasons for the exercise of the power of exemption by N.R.A. may be stated as follows:

(a) The avoidance of lawsuits pending the definite ascertainment of the meaning of the law.

(b) The recognition of special cases which could not fit under a general rule.

(c) Relaxation in cases of an emergency nature where humanitarian considerations were concerned.

(d) The relaxation of questionable policies, especially of an economic nature.

The power to exempt or except is thought by some to relate to the time of the order of approval; but this, in the author's opinion, is an incorrect conclusion. Rather, this power should be based upon the construction of the Act. The grant of power to exempt was conferred by Section 10 (b). There may be some doubt, however, as to whether exemptions and exceptions are included within the phrase "cancel or modify"; and this point should be cleared up by any future legislation.

It should be made clear that the power to grant exemptions might be made at the time of the order of approval of a code or afterward, that the exemption itself might be modified or terminated, and that the power to exempt might apply to an individual, a group of individuals, an industrial sub-division or an entire industry, or to American industry in general.

The terms "exemption" and "exception" should be legislatively defined. It is suggested that "exemption" should refer to administrative action by which a particular member, or several members, of an industry or trade might be relieved from full or partial operation of a code; and that an exemption per se should not operate unless there was a prior obligation to abide by the code.

The term "exception" should refer to administrative action whereby an individual or group of individuals, or an entire industry or trade, might be relieved from the operation of a code, or of a portion thereof, by the terms of the code itself.

Great latitude and discretion should be reposed in the administrative agency with respect to the period of an exemption.

Retroactive exemptions should be eliminated. Should situations arise in connection with which the power of condonation ought apparently to be exercised, they should be handled in that manner rather than by

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In the author's opinion a number of N.R.A. administrative orders of exemption contained conditions which were invalid.

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GOVERNMENTS CONTRACTS

Preliminary Summary of Findings

Shortly after the passage of the National Industrial Recovery Act the Administration foresaw the necessity of requiring the government, as a consumer, to cooperate with Title I of the Act and its administration, by restricting its purchases to members of industry complying with codes and the President's Reemployment Program. Executive Orders 6246 of August 10, 1933, and 6646 of March 14, 1934, were promulgated to effectuate this policy, and required Code and P.R.A. compliance on the part of government contractors and suppliers.

In summarizing the preliminary findings of this study no attempt has been made to determine whether Executive Orders 6246 and 6646 were successful or unsuccessful as secondary means of enforcing Codes and the P.R.A., since neither conclusion could be proved by the facts available. Numerous individual examples can be given to support either view; but an attempt to evaluate the compliance involved in the several billions of dollars of contracts and sub-contracts which were subject to these Orders would entail investigation far beyond the limitations of the present study.

If it could be concluded that everyone who signed a compliance certificate was complying and continued to comply with all provisions of each Code to which he was subject, and that the only violators of the provisions of the Executive Orders referred to were those whose contracts were cancelled or were recommended for cancellation, the problem would be reduced, more or less, to a matter of simple arithmetic, and it would appear that the Orders were unqualifiedly successful. No informed person, however, would accept such a simple formula for determining the success of these Orders.

The most that this study can have accomplished is to show how the purposes of these Orders were obstructed by conflicting statutory regulations governing federal purchasing, by uncoordinated inter-departmental administration, and by the rulings of the General Accounting Office; and as a result of these findings to suggest means for circumventing similar difficulties in connection with future regulations, either through Executive Order or by statute.

To avoid conflict with existing Governmental purchasing statutes, any future regulation of Government contracts that attempts to restrict bidding and contracting to a specified class or classes of enterprises should have the force of a statute rather than of an Executive Order, and should provide specifically for the modification or repeal of existing statutes in conflict with its requirements.

To avoid the uncoordinated interdepartmental administrative efforts, which were shown to exist throughout the agencies of the Government by the varying and conflicting compliance certificates and provisons relating to contracts, some one agency should be designated, with authority to draft the clauses necessary to enforce any future regulations, in all the contract forms and compliance certificates used. This agency should likewise be given authority to make findings as to violations and

interpretations of the provisions of the statute; and these should be binding on all Government agencies, including the General Accounting Office. With this authority and with sufficient personnel to investigate cases promptly and to make findings on alleged violations, it is believed that such a statute would be far more effective in accomplishing its purpose than were Executive Orders 6246 and 6646.

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INTERPRETATIONS AND EXPLANATIONS

Preliminary Summary of Findings

The power of interpretation was not specifically set forth in the present Act. Its existence depends upon construction of the Act and upon implication from other powers conferred by the latter. Adequate provision for the administrative exercise of this power should be included in new legislation, if there is any.

No legislative use of the term "interpretation" is found in the recent Act. In presidential and administrative use it is coupled with other synonymous terms. Complete definition of the term "interpretation" should be legislatively declared.

Interpretations, when issued, have the effect of code provisions. The power is of too great import to be delegated to many lesser officials. Centralization of the delegated authority in the administrative body is suggested, with a possible exception of delegation to an "interpretation officer", if necessary. Upon receipt of a bona fide application an automatic grant of exemption is suggested, pending official interpretation, to prevent hardship and unreasonableness.

The power of general executive or administrative interpretation should be specifically provided for in new legislation, if there is any.

Interpretation by the issuance of rules and regulations was permitted by Section 10 (a) of the Act, and violation of the rules and regulations was made a criminal offense. It is suggested that future rules and regulations should contain a clause specifically referring to the criminal effect of violation, if any new legislation should incorporate the substance of Section 10 (a).

Some interpretations in effect amended code provisions. This use of the power of interpretation was beyond the scope of authority of lesser officials of N.R.A., and was exercised without recourse to the usual due process requirements.

Delegation of the power of interpretation to code authorities should be legislatively prohibited. Likewise, code authority rules and regulations, relating to substantive code matters and in the nature of interpretations, should be barred.

The administrative distinction between "interpretation" and "explanation" is difficult of determination. No control of all explanations is possible. The issuance of explanations which were in fact interpretations was a recurring problem. It is suggested that the use of and reference to the term "explanation" be abolished; that only interpretations be considered; and that a control board be empowered to determine whether or not a problem is one of interpretation.

The reasons for the interpretations examined are, in part:

(a) Faulty drafting of codes.

(b) Ignorance of problems and extent of code administration.

(c) Necessity of elaboration of general statements.

(d) Classification of industries.

(e) Overlapping code definitions.

(f) Inconsistencies of code provisions with executive and administrative declarations of policy.

Most interpretations were issued without consideration by or notice to the industry, trade or other interested group. It is suggested that in any future legislation, power be conferred to interpret without hearing or notice to such groups.

A rule of precedent with respect to interpretations should be established, and a readily accessible and properly indexed reference thereto should be maintained.

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MULTIPLE CODE COVERAGE AND OVERLAPPING CODE DEFINITIONS

Preliminary Summary of Findings

Multiple code coverage existed when the operations of an enterprise were subject to the provisions of more than one code. Such codes might be those of one industry or trade, or of several. In the sense generally understood, however, a case of multiple coverage involved the codes of two or more industries.

The problems resulting from such a situation became apparent most frequently:

1. In the efforts of the code authority of one industry to collect assessments from the members of another, on the ground that they were producing and/or distributing products within the definition of the former industry.

2. As a result of differences in the wage and hour provisions of the codes of industries manufacturing or distributing similar or competing products.

3. In cases where the manufacture, sale, distribution, erection and installation of products required operation under two or more codes.

At the root of the problems of multiple code coverage lay the impossibility of requiring an enterprise to keep itself within the confines of one industry or trade as defined by a code, and of refusing it the right to produce or sell what it chose, and to determine to its own satisfaction how far it should go into side lines. From the industry standpoint it was a continuing problem, and to a certain extent an unsolvable one.

Multiple code coverage almost always increased production costs. The worst of the problem would have disappeared had some way been found to equalize the cost of production in competing industries.

The establishment of minimum wages and of maximum hours and other labor provisions, differing greatly in detail, were sought without an adequate and fundamental industry classification, especially in the early codes.

The administrative procedure for handling multiple code coverage problems did not exhibit the coordination necessary to successful results.

The problem of overlapping code definitions of industries and trades is so closely related to those of multiple code coverage and of the classification of members of industries and trades that they should really be considered together. Much of the difficulty encountered in connection with the first two of these complications was due to the third.

The absence of a classification pattern for coordinating the code structure as a whole was a fundamental defect, as was also the lack at the start of an adequate plan for fitting together codes of different industries and trades into economically related groups.

Unregulated freedom in writing code definitions was another primary cause of trouble, because of the overlapping jurisdiction to which it led.

Lack of experience and administrative precedent, plus the failure of N.R.A. to anticipate important problems, made it necessary to attack many administrative troubles after they had gained headway. By that time the problems had often become so obvious as to have been widely recognized outside N.R.A., and the public reaction was detrimental.

Varied as the experience of N.R.A. has been it is still insufficient to make possible a complete solution of the difficulties arising from the classification of members of industries and trades, from multiple code coverage, and from overlapping code definitions. But, though some problems of the sort may be looked for in any regulation of industrial practices based upon the individual industry, their magnitude and seriousness might be much reduced by proper consideration of the facts developed through the experience of the past.

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N.R.A. COMPLIANCE ACTIVITIES

Preliminary Summary of Findings

In the author's opinion an analysis of N.R.A.'s compliance experience warrants the statement of the following basic principles.

It is necessary that legislation of the N.R.A. type be of such nature as to receive the support of public opinion and the courts.

In view of the decision of the Supreme Court, such legislation should confine itself to regulating interstate commerce. It was noticeable that public opinion more readily supported N.R.A. in its efforts to regulate purely interstate matters than in its attempts to deal with activities that were local in nature.

Regulatory provisions which are simple and easily understandable rather than complex, and which are few in number rather than numerous, are, of course, most easily enforced. Standardization of such regulatory provisions for all the industries affected will reduce the number of provisions required and simplify their context.

Compliance is more easily obtained with provisions which are limited in their departure from established usage, than with those which set up standards not having a basis in customs and past usages of industries.

A higher degree of compliance than that which was achieved with the N.R.A. codes could be obtained with legislation which restricted its regulations to simple labor provisions, such as child labor, minimum wages and maximum hours, and which recognized only trade practices such as those covered by the Federal Trade Commission codes. The latter regulate trade practices so obviously unfair that they are already condemned by public opinion.

Legislation which required the keeping of sworn wage and hour records by the employers affected would simplify compliance efforts.

A higher degree of compliance can be obtained with provisions the violation of which is easily established, than with those the violation of which can be proved only by evidence difficult to obtain. For example, it is extremely hard to prove that a secret rebate has been given, because the facts are exclusively within the knowledge of persons who are financially interested and reluctant to disclose them.

Compliance would be aided by legislation requiring the payment of restitution to aggrieved employees in labor violation cases.

Legislation of the N.R.A. type should provide for semi-judicial agencies of the Regional Compliance Council type, which would have the power to subpoena and swear witnesses; to make findings of facts binding on the courts; to assess amounts of restitution; to levy fines for both trade practice and labor violations; and to obtain injunctions from the courts through their own employees and own findings of fact, rather than through the Department of Justice.

The states should be induced to regulate intrastate commerce along the lines of the Federal regulation of interstate commerce.

The agency charged with the responsibility of administering legislation which regulates industry should have complete authority over labor violations, and assistance of intra-industry committees in the handling of trade practice violations.

Such an agency, by using trained, educated personnel, should adopt an active policing system, rather than the passive complaint system which was used by N.R.A. It should permit the adjustment of cases by its field policing personnel only in cases in which the facts are undisputed, and should provide for an appeal from the fact finding agencies above mentioned to a similar central body, and thence to the Circuit Court of Appeals.

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N.R.A. INSIGNIA

Preliminary Summary of Findings

The primary objective of N.R.A. insignia was to further cooperation by industry and by the public. A secondary objective involved the use of the Blue Eagle as a direct means of enforcement.

On the whole the code authorities were not well enough organized and not free enough from criticism on the score of partiality, to be entrusted with controlling power over insignia and labels.

A single emblem, as distinguished from the emblems designating industry or trade connections, would have avoided confusion and would have simplified administration.

As a result of the above findings, the following recommendations are made:

(a) That specific insignia provisions be incorporated in any new legislation, to remove doubt as to the legal basis

(b) That adequate insignia regulations be prepared in advance of issuance. This was not done by N.R.A.

(c) That if any insignia is to be used in connection with new legislation, a single simple emblem different from the previous Blue Eagle be adopted and patented.

(d) That regulations vest all control, including distribution, in the enforcement branch of the Government alone.

(e) That any regulations adopted prohibit the use of the insignia in connection with the raising of revenue by industry agencies, in order to preserve its broader symbolism.

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THE PRESIDENT'S REEMPLOYMENT AGREEMENT

Preliminary Summary of Findings

It is doubtful whether any preliminary plan would have been more effective than the P.R.A. in effectuating the National Industrial Recovery Act, especially as to reemployment. The Agreement bridged the gap in time necessary to bring members of trades and industries under codes. It was instrumental in eliminating child labor. It helped to expand purchasing power by increasing wages, reducing work hours and spreading employment. It created public opinion in favor of the President's reemployment drive. It tended to diminish unfair competition between interstate and intrastate commerce. It revealed the special problems of individual trades and industries. It set standards for labor in all trades and industries in all localities at the same time, subject to approved modifications. It prepared members of trades and industries for codes. Indirectly, it persuaded them to submit codes for approval. Finally it tended to ease competitive inequalities between condified and uncodified industries. Altogether, it more than fulfilled the Administration's expectations.

Setting aside the existence of an emergency and the need for immediate action, experience has shown that haste should be avoided in launching a program like that of the President's reemployment drive and the Reemployment Agreement. Wherever possible the wording of such an agreement should be simplified, and the statements should be specific rather than general, thus reducing to a minimum the need for interpretations and explanations.

Before launching the program the policies involved should be clearly defined; and adequate machinery should be set up to educate those affected as to what is expected of them, and to administer and enforce the agreements.

If widespread cooperation is sought, a symbol or insignia for use by assenting employers has a good effect, and enables the public to determine readily who is and who is not cooperating. Whether the boycotting of those who fail or refuse to assent or comply should be encouraged is a question of policy.

The advisability of using voluntary organizations for administration and enforcement is questionable, because such agencies are apt to be understaffed, and full time cannot be devoted to the work. Great care should be used in selecting personnel for administration and enforcement, and it should be thoroughly trained.

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PRISON COMPETITION AND THE PRISON COMPACT

Preliminary Summary of Findings

The "Compact of Fair Competition for the Prison Industries of the United States of America," commonly called the "Compact," was a voluntary agreement entered into between state authorities and prison executives on the one side, and the National Recovery Administration on the other.

The Compact was for the purpose of establishing a workable relationship, in so far as existing laws permitted, between free industries and the prison industries, in an effort to carry out the policies of Title I of the National Industrial Recovery Act, and especially to bring it about that prison-made goods, when disposed of in the open market, would be sold under competitive conditions, fair to free industries.

The prison industry problem was essentially a state affair. The Federal Government can be of assistance by advising and aiding the states in the formulation of a diversified program; but on no account, in the author's opinion, should it attempt to force into effect a program which the states do not voluntarily accept.

The competition of prison goods with free industry goods became an N.R.A. problem when an attempt was made by the sponsors of the Codes for the Cotton Garment, the Farm Equipment and the Twine and Cordage Industries, and others, to insert in their codes clauses to prohibit their members from handling or selling prison-made products.

The state prison executives and the Bureau of Federal Prisons proposed to the President a code which embodied the principles contained later in the Prison Compact; but in the opinion of the N.R.A. Legal Division these groups were not entitled to a code because they could not meet the requirements of Section 7(a) of the National Industrial Recovery Act.

Provisions were inserted in the Cotton Garment and the Retail Codes, which in effect prohibited members of those industries from dealing in prison-made goods, unless they were manufactered under the terms of a prison compact. These provisions were stayed until a compact could be formulated.

In the opinion of the N.R.A. legal advisers the Compact, when formulated, lacked legal validity for the following reasons;

(a) State compacts require the consent of Congress

(b) It is doubtful whether Congress may delegate its power to give consent to such a compact to the executive branch of the Government

(c) The National Industrial Recovery Act did not contain any delegation to the President of the Congressional power to consent to compacts; and the Compact was not an agreement within the meaning of the Act

(d) The Prison Labor Compact may not have been properly executed, as it did not comply with the desirable rule that a State legislature pass a bill providing for the adoption of the act of its agent before a compact is signed, and providing further that the compact shall then be the law of the State. In one instance only - that of the State of Kentucky - was there state legislation in support of the Compact.

The Prison Compact did reduce to a great degree the loading of the markets with prison-made goods. The efforts of the prisons to comply with the Compact diminished the dumping of such goods at less than fair current prices.

The Prison Labor Authority was unable to accomplish much with respect to the diversification of Prison Industries, as provided for under Article VII, Section 2(f) (1) of the Compact. However, in some instances, they were able to reduce the production of prison-made products.

In the author's opinion, Federal legislation should be enacted to encourage the States to enter into a prison compact through approval by their legislatures. The objectives and purposes of such a compact should be:

(a) To maintain fair competition between products of private domestic industry and those of prison industry.

(b) To assure a diversification of the output of prison industries, in fair proportion to the production of the affected free industries.

(c) To relieve unemployment within the penal institutions of the states by providing work for the inmates of a rehabilitative and character-building nature, and to lessen the dangers inherent to idleness.

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SHELTERED WORKSHOPS

Preliminary Summary of Findings

A "sheltered workshop" may be defined as a charitable institution whose activities are conducted not for profit, but to provide remunerative employment for physically, mentally or socially handicapped workers.

The problem confronting the N.R.A. in this connection was to do justice both to the labor standards for regularly employed workers, which were being built up in the codes, and to the handicapped persons in such sheltered shops.

The Administration's policy was that charitable institutions should not be covered by codes, as they did not engage in industry or trade; but that when such institutions, including sheltered workshops, did engage in industry or trade, even though not for profit, they should sign the P.R.A., and might then come within the terms of permanent codes.

On March 3, 1934, there was issued Administrative Order X-9, which might well be called the charter of sheltered workshops under N.R.A. This granted exemption to such shops provided they signed a pledge that they would not:

Employ minors under 16 years of age, except for instructional purposes, when approved by a Regional Committee,
Engage in destructive price cutting or other unfair method of competition
Willfully hamper or retard the purposes of the Act.

N.R.A. proved a most important milestone in the development of sheltered workshops. For the first time the cause and problems of these institutions were given adequate representation in the industrial forum. For the first time links were established between private industry and the government and the sheltered workshops, and among the latter themselves.

If a new Act is proposed, it should provide specifically for the administration of sheltered workshops in the same manner as under the N.R.A.

If the use of labels is approved for industries, it should be authorized for sheltered workshops also, subject to compliance with the proper conditions.

If no new legislation for industrial recovery is proposed, measures should be taken to continue the National Sheltered Workshop Committee, or its equivalent, under the supervision of the Federal Government, either as a separate agency or as a unit of an established department.

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STAYS

Preliminary Summary of Findings

The present report deals with the exercise of N.R.A. administrative power in the staying of codes and code provisions. Many administrative problems and difficulties were disposed of with varying degrees of finality by the use of stays, and others were postponed.

No mention of the term "stay", or of any such power, is found in the National Industrial Recovery Act. The exercise of the power was based purely on an implied grant, which in the author's opinion was insufficient. This basis is found in Section 10(b).

Various attempts were made to define a stay, as there had been no legislative definition. These definitions, however, failed to describe the actual use. The line of demarcation was arbitrary.

The term "stay" was used more or less interchangeably with "exemption" and "exception", and the result was confusion. Legislative definitions of these terms should be made. There were no limitations as to when a stay or an "elimination" (that is, a deletion by permanent stay) might be invoked. Code provisions were often amended by the use of conditional stays.

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TERRITORIAL CODES AND AGREEMENTS

Preliminary Summary of Findings

The Constitution of the United States gives Congress plenary power over the territories. The general laws of the United States hitherto not locally applicable have been extended by statute to Alaska, Hawaii and Puerto Rico, but not to other territories. The National Industrial Recovery Act, consequently, applied to those three, but to no others. It was within the President's discretion to bring territorial trades and industries within the N.R.A., either by inclusion in national codes or by means of separate instruments.

In the beginning the territories were regarded as the same as other parts of the country, and were treated in the same manner. Late in August, 1933, however, the Administrator announced that the divergent economic conditions in the territories made it impossible to apply basic national standards, and that provision, therefore, would have to be made for territorial trades and industries.

Alaska imports almost all its manufactured goods from the United States proper, and sells its products almost entirely to the latter. The cost of living and the prevailing wages in Alaska are somewhat higher.

The products of the Territory of Hawaii are sold almost entirely on the mainland, and Hawaii purchases nearly all its manufactured goods from the latter. The cost of living and the prevailing wages are about the same as in the States.

Outside of agriculture Puerto Rico's only industry of any importance is needlework. The products are sold on the mainland, and the Territory's trade is almost entirely with the United States. Wages are in general lower than on the mainland, and the standard of living for the bulk of the dense population is also lower.

After the admission that mainland code standards could not be applied to the territories, no effort to enforce national codes in the latter was made, and their status with respect to codification was left undetermined. This confusion made it inadvisable to take the position that employers in the territories should comply. Later a plan was worked out which reaffirmed the principle that enterprises in the territories were subject to approved national codes, but which recognized that full compliance with the latter was often impossible, and that the territories, consequently, should apply for amendments, pending which no effort at enforcement would be made. The procedure laid down was similar to that prescribed for the negotiation of the national codes.

Alaskan industries did not seek amendments, as they were already paying more than the national codes required as minimum wages.

Hawaii departed from the policy laid down, due to a misunderstanding and to the insistence of the local trades and industries on separate codes.

Puerto Rico found conformance with the standard plan impracticable in case of the Needlework Industry, and received permission to write a separate code for the latter. Attempts to negotiate amendments were not very successful.

For practical reasons it was deemed expedient to permit the negotiation of separate codes in Hawaii to continue; and the same privilege, for similar reasons, was extended to Puerto Rico. This policy was necessary to prevent the complete collapse of the efforts to bring these territories under the active operation of the Recovery Act.

Only five of the 25 separate Hawaiian codes submitted had been approved at the time of the Schechter decision, and those only very recently. Only two of twelve proposed separate codes for Puerto Rico were approved.

The administration of codes in Alaska from Washington, with a Deputy stationed at Juneau, proved satisfactory except in the matter of exemptions.

In Hawaii the separate codes in effect required action by the Recovery Board on many points, and administration from Washington proved impracticable. Authority was delegated, therefore, to the local Deputy, subject to review and disapproval in Washington.

Puerto Rico, unlike Hawaii and Alaska, has good air mail service to Washington. It was therefore considered unnecessary to delegate special administrative authority to the Deputy there.

These plans failed to accomplish the purposes desired, and demonstrated the difficulties involved in separate codification. If the problem should again present itself, the difficulties might be eliminated in the beginning by having the territories properly represented in the negotiation of national codes. They would then be put under the latter, subject to such special provisions as their economic conditions might require.

UNCODIFIED INDUSTRIES

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UNCODIFIED INDUSTRIES

Preliminary Summary of Findings

During the period of N.R.A. activity, from June 16, 1933, to May 27, 1935, 557 basic codes were approved. In addition to these there were submitted approximately 5,000 other codes. Records of the latter were not kept in such a manner as to make analysis possible, but it is known that many were dropped because of merger with other proposed codes, or with codes already approved.

Large industries for which no codes were approved were electric light and power, telegraphic communication, telephone, shipping and meat packing. There were approximately 3,000,000 employees in eligible industries not codified. No effort was made to codify certain large industries, of which the railroads were one.

Of the many reasons why important industries remained uncodified the outstanding ones were:

1. Doubt as to the true representation of an industry by the code sponsors.

2. Objections by representatives of some industries to operating and trade restrictions in their codes, introduced by N.R.A.

3. Strong claims by some enterprises within an industry that the proposed code conditions would be oppressive and an aid to monopolization by enterprises claimed to be favored.

4. Discouragement of code sponsors because of excessive debate.

5. Lack of continuity in code negotations through frequent changes in N.R.A. personnel and the shifting of industries from one N.R.A. Division to another.

6. Various forms of maneuvering by code committees to secure commercial and industrial advantage over competing industries: e.g.

(a) Questions why certain industry groups should be codified, while others reaching into the same markets remained without codes.

(b) Protests of one industry against the granting to another of a code permitting more favorable operating conditions. The real motive for a protest was frequently obscure, and N.R.A. had no alternative to delaying procedure until the purpose was clear.

7. Deliberate procrastination by N.R.A., at times, because of the knowledge that some codes would involve extraordinary, if not impossible, problems of administration and enforcement.

The nature of this study, in the author's opinion, precludes the offering of constructive suggestions for new legislation.

Any solution of the administrative problem will require a thorough analysis of all the factors influencing industry groups away from codification, and the extraction therefrom of permanent principles of policy designed to eliminate the former difficulties.

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ADMINISTRATION OF LABOR PROVISIONS BY CODE AUTHORITIES

Preliminary Summary of Findings

In evaluating the performance of Code Authorities in administering the labor provisions of their codes two criteria suggest themselves:

First, the impartiality, efficiency, accuracy and expeditiousness with which it performed its duties under the code and the various administrative orders; and second, its activities in studying and improving the code itself.

It has been found tentatively that one of the major causes of variation in the administration of labor problems by Code Authorities was the presence or absence of labor representatives. For the purposes of this study industries have been divided into groups with and without labor representatives on the Code Authority.

Using the criterion of interest in labor problems, Code Authorities with labor representation show much greater activity than those without, though there are some exceptions. Less attention was paid to labor matters when the union in the industry was very weak and also when the labor representative on the Code Authority was not chosen by the union or the Labor Advisory Board. The Photo-Engraving Industry, though it had a strong labor organization and representation on the Code Authority (not officially approved), paid but minor attention to labor problems. This industry had worked for years under collective bargaining agreements, and had a functioning machinery to take care of its labor problems. The Recovery Act did not affect this machinery, and there was apparently no reason for the Code Authority to undertake the administration of labor problems which had been handled for years by another agency.

It may also be concluded tentatively that the mere presence of a strong labor organization in an industry did not cause the Code Authority to consider labor problems more attentively. Only when such labor organizations were represented on the Code Authority, apparently, did they appear to exercise a marked influence on the attention paid to labor problems.

Many code authorities which had no labor representation apparently desired to be free from the surveillance of the Administration, and to act not as advisory bodies, but as final administrative bodies.

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BACKGROUND OF CODE ASSESSMENTS

The financing methods of trade associations were adopted by Code Authorities, except that they did not involve the element of compulsion that ultimately characterized assessments for code purposes. In the first quarter of N.R.A.'s existence the proportion of codes containing mandatory assessment provisions was approximately seven per cent, whereas during the last quarter it was about eighty per cent.

The commonest basis of contribution was that by which the payments to be made were figured as a small percentage of the member's volume of business.

An examination of 60 codes for which records are available, and which provided for assessments, both on the mandatory and on the voluntary basis, showed that expenditures for an adjusted 12 months period on a voluntary basis amounted to about $1,450,000 as compared with about $2,250,000 expended on a mandatory basis.

From an examination of these 60 codes, it appears that more members participated and contributed under mandatory assessment systems than had formerly been the case under the system of voluntary contributions.

A study of the various N.R.A. industry divisions indicates that the percentage of mandatory codes varies inversely with the total number of codes in each division. Code financing is affected much more by the size and nature of the industrial group than by its location in any one of the 12 industry divisions.

If a future code system similar to N.R.A. is established binding on all members of industry, it seems exceedingly doubtful whether it can function without Government assistance in obtaining funds under some degree of compulsion.

BASES OF CONTRIBUTION - USE OF LABELS

As compared to other means of obtaining funds, the sale of labels was an effective tool; and it was not unduly expensive. If labels are to be used in the future, the power of issuance and suspension should be either retained entirely or closely supervised by the Government supervisory agency. Labels in some form could be used in connection with all articles sold as such through retail channels.

Labels should be sold on a sliding scale, and the prices should be related to those of the articles, to which they are to be attached. Periodic adjustments should be made by assessing each industry member on the basis of a percentage of his sales and allowing for the difference between this and the amount collected from the sale of labels.

OTHER BASES OF CONTRIBUTION

In order that bases of contribution may be equitable and the burden not unreasonable, payments should be related to the size of the contributing enterprises. Only an approximation to equity is possible; and this can best be obtained by assessing on a small percentage of sales volume.

The volume of business upon which assessments are to be based should preferably be averaged over a long enough period to overcome the effect of temporary variations. The period, moreover, should be the most recent practicable prior to the budget period.

CODE CONSOLIDATIONS

If code consolidations are to consist in bringing industries together under a basic code, with supplementary codes for the divisions of the larger group, administration will be about as costly as it would be with entirely separate organizations. If a consolidation, however, consists merely of an agreement by a group of small industries to use a common administrative or secretarial agency, a considerable degree of economy is possible.

MULTIPLE SECRETARIES

Of a total of 871 divisional and supplementary codes, 219, or 25 per cent, were administered by multiple secretaries.

The smaller codes utilized multiple secretaries more extensively than larger ones.

An examination of the operations of multiple secretaries under approved budgets and bases of contribution discloses, under the control exercised by N.R.A., no definite cases of fraud or maladministration.

Special precautions and the submission of adequate and pertinent information regarding the operations of multiple secretaries should be required before permitting them to administer codes.

DUTIES AND COMPENSATION OF CODE AUTHORITY EXECUTIVES

The executive personnel employed by Code Authorities should be experienced and familiar with the industries involved, and should command the respect and confidence of the membership.

The arbitrary limitation of executive salaries to a maximum of $10,000 or less might be false economy. It would be better to assure competent administration with adequate or liberal compensation.

GOVERNMENT CONTROL

If it should be decided that the plan of self-government in industry, as developed under N.R.A., put too extensive powers into the hands

of Code Authorities, or that the danger of abuse is so great that other methods of administration should be used in any future case of a similar nature, the methods of financing should be changed accordingly.

The more closely Government officials supervise, control, or administer the provisions of any Act, the more necessary would it be that funds be raised by a method comparable to taxation, and that they be allocated on an equitable basis among the various parts of the organization. The usual methods for enforcing the payment of taxes would be in order.

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2. Defensible as True Representation but Aroused Opposition on the Part of Small Enterprises, and Hampered Compliance
C. National Code Authorities Appointed by Divisional Code Authorities
1. Where Many Divisions Existed, it was Natural to Have Each Select One Member of the Central Code Authority
2. The Result of this Method was to Eliminate Minority Representation, Especially of Non-Association Members
3. Similar Problems Arose Within Federated Trade Associations, or Wherever One Representative was Selected from Each Group
4. Several Alternative Methods of Selection Were Employed in Federated Codes to Preserve Minority Opinion

II. Statistics of Code Authority Selection
A. Efficiency of Trade Association Control
1. Trade Associations Selected All Code Authority Members in 50 percent of the Largest 35 Code Industries (covering half of All Industry) and in 25 percent of all Code Industries. They Also Selected a Majority of Code Authority Members in Another 17 percent of Large Code Industries and in 37 percent of All Code Industries.
2. Details of Such Selections Varied Among Different Codes, But the Result in All Cases Placed Control in the Hands of the Large Concerns, Which Usually Controlled the Trade Associations
3. Such Control by Trade Associations Promoted Efficiency in Code Administration, Because the Code Authorities Got the Benefit of Trade Association Funds, Staff, and Experience.

4. Such Control Did Not Make For Democracy, because Trade Associations Contained Only a Moderate Percentage by Number of Industry Members.

B. General Industry Elections
   1. In 14 percent of the 35 Largest Code Industries, and in 34 percent of All Code Industries, Code Authorities Were Elected by a General Vote of Employing Industry Members, Without Regard to Trade Association Affiliation.
   2. The Democratic Effect of Such Elections Was Limited:
      (a) By the Prevalence of Weighted Voting
      (b) By the Limitation of Suffrage to Assenting Concerns,
      (c) By Seating Trade Association Officers Ex-officio on Code Authorities
   3. With All These Advantages in Their Favor, Trade Associations Ran Their Slates With Marked Success: No Example Has Been Found of the Defeat of a Trade Association Slate by Non-Association Members.

C. Minority Representation Guaranteed
   1. Besides Stipulations for the Representation of Geographical and Functional Minorities, Non-Association Minorities Were Guaranteed Representation in 17 percent of the Largest Code Industries
   2. Most of these Minorities Were Informally Selected: Others Were Elected by the Whole Industry or Appointed by N.R.A.
   3. Even when the Selection of Such Minorities Was Provided For the Plan was Often not Carried Out, or the Selection was Made by a Small Percentage of Eligible Concerns
   4. Minority Representation on Code Authorities Was More Important Than in Political Legislatures and Was The Most Democratic Device in N.R.A. It Might Have Been Wise to Provide for the Presence of Even More Minority Representatives on Code Authorities, but Without Vote.

D. Minor Methods of Selection
   1. Appointments by Divisional Code Authorities was Frequent in the Large Federations
   2. A Few Small Codes Provided That All Industry Members Should Sit on the Code Authority
   3. Where Industries Could Not Agree on Code Authority Members, N.R.A. Appointed Them
   4. Determination of the Method of Selection was Often Postponed, to be Determined Later by Administrative Order
   5. Complicated Combinations of Major and Minor Methods Were Common.

III. Correlation of the Composition With the Behavior of Code Authorities

A. Certain Code Authorities Were so Inactive That They May Be Dismissed from Consideration

B. Others Were Active, but had Trouble With N.R.A. or with Their Own Members: Grossly Unrepresentative Methods of Selection Were Practiced in Some Cases

C. Still Other Active Codes Were Smoothly Administered, According to Their Code Historians: Defects in Their Formal Representation Must Have Been Cured by the Selection of Temperate Representatives.

COMPOSITION OF CODE AUTHORITIES

Preliminary Summary of Findings

Extra-Industry Representation Was Negligible.

N.R.A. accepted the principle of minority representation, in the sense that the Code Authority should represent all interests involved. Except in the case of a few codes, however, the employing members of industries alone were regarded as constituting an "interest." Labor, that is to say, was represented only on 42 Code Authorities, consumers only on 10, and other industries only on four.

Trade Association Members Controlled Practically All Code Authorities.

A majority of the code authority was normally selected from trade association members, or from the large firms which controlled the trade association. Most codes expressly gave a code authority majority to associations, as shown by the table below. General industry elections were usually won by trade association candidates, or by representatives of large firms.

Table I
Methods of Selecting Code Authorities

Size Group of Industries	Per Cent of Code Authorities:				
	Designated by Trade Association:		Elected by Members of Industry	Selected By Other Methods	Total
	All Members	Majority of Members			
35 Largest Code Industries	50	17	14	19	100
All Code Industries, Including Divisions	25	37	34	4	100

The problem in code authority selection, then, was to provide some check on the inevitable control by large trade-association concerns. The codes themselves and the N.R.A. administration members constituted one set of checks. Another was the representation of minorities.

Elections Were Normally Won By Trade Associations.

General industry elections, except in one instance (that of brush manufacturing), were not planned to secure minority representation. They were not as democratic as political elections, because (1) trade association officers were frequently seated ex-officio on the Code Authorities, (2) the suffrage was limited to paid-up assenting members, and (3) votes were frequently weighted. It seems probable, moreover, that sponsoring trade associations did not consent to general elections unless they were confident of putting in their slates. No example has been discovered of an association slate being defeated by non-association members.

Weighted Voting Accepted But of Doubtful Value.

This state of affairs was largely brought about by the device of weighting votes according to volume of production. The system was prescribed not only in 15 per cent of all codes, but also in N.R.A. administrative orders, code authority regulations and trade association by-laws. It could be defended, though not conclusively, if the criterion of an election device were "true representation." If the criterion were efficiency in securing compliance, weighted voting became less defensible. It might keep all minority representatives off the Code Authority, or it might turn code administration into a police job, which could be done better by impartial government representatives. Unless a Code Authority could pledge the consent of at least a numerical majority of the industry, it could not be much help in enforcement.

Minority Representation Important

Since general elections proved to be another form of trade association control, guaranteed representation for minorities was the chief democratic function of N.R.A. A minority member on a Code Authority was in a stronger position than minority members in a legislature, because he could appeal to N.R.A. if he was outvoted. On advisory matters his arguments had as good a chance as those of the majority.

Several kinds of minorities existed in industries. The most important kinds were small non-association concerns, and geographical or functional groups. Representation for the last two was normally demanded and arranged by the sponsors of codes. N.R.A. insisted on guaranteed non-association representation on 331 out of 886 parent and divisional code authorities. It might have been wise to encourage the presence of non-association minority representatives without vote.

Appointment by Divisions Favored Trade Associations.

Mention should be made of the system of having each division of an industry appoint one representative to the Code Authority. Usually, such divisions were based either on districts or on functional groups. Whichever the basis, if only one member was appointed, he would normally represent the majority group in that division and exclude all minorities from representation. Thus, in the wholesaling trade, where most divisions had trade association majorities and non-association minorities, the majority on the basic Code Authority was purely

trade association. This system of selecting national code authorities did not provide any check on trade-association control.

Code Authority Organization - Geographical Divisions.

Code Authority organization followed no one pattern. The boundaries of geographical districts varied widely. N.R.A. had little contact with the local groups, and has little information about them on file. Many of these geographical divisions were as important as supplementary codes, and should have had administration members attending their meetings.

Code Authority Meetings.

Attendance was good at the sample of Code Authority meetings whose minutes are at hand. A surprising proportion of the time was spent in discussing conflicts of jurisdiction. Evidently, the complications of the system hampered its operation.

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LEGAL ASPECTS OF THE CODE AUTHORITY

Preliminary Summary of Findings

No agencies analagous to Code Authorities have been found. Several types of agency with more or less similar characteristics are discussed in the report.

Two opinions are expressed as to the legal status of code authorities. Both start with the view that Section 2 (a) of the Recovery Act was the statutory basis for code authorities. From that point one theory contends that code authority members were not appointed by the President and were therefore not "public officers," and that the code authority was not a "government agency"; the other contends that the members were in effect appointed by the President, and that therefore the code authority was a "government agency" and its members "public officials."

Three theories are advanced to sustain code authority power to levy and collect assessments, namely:

(a) The failure to pay an assessment was a violation of a code.

(b) The power was incidental to the power of the President to carry out the purposes of the statute.

(c) The contract theory.

These arguments are advanced to refute the three legal objections raied to assessments. The objections were:

(1) That assessments were taxes and that the power to levy them could not be delegated.

(2) That by means of assessments money could be collected and disbursed by non-official groups.

(3) That assessments deprived industry members of their property without due process of law

No conclusion has been reached with regard to the arguments advanced to sustain the power of the code authority to require reports and to inspect the premises and accounts of members.

With respect to the benefits of the incorporation of code authorities, the conclusion has been reached that incorporation would only limit the personal resposibility of members with regard to contracts and would permit code authorities to sue and to be sued as units.

Code authorities had no legal right to grant exemptions, to make absolute or conditional rules binding on industry members, or to make interpretations.

The conclusion has been reached that the tendency on the part of N.R.A. was to take quasi-judicial power away from code authorities; but that in cases where code authorities did exercise such quasi-judicial powers notice and opportunity for hearing must have been given or provision made for judicial review before a determination was made.

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ORGANIZABILITY OF INDUSTRY FOR CODE ADMINISTRATION

Preliminary Summary of Findings

The experience of 100 coded industries, comprising 17,000,000 workers or three-quarters of the total under N.R.A., indicates that possession of the following economic characteristics is conducive to effective self-government under codes: geographic centralization, financial control by a few units, basic economic processes, unionization, mechanization, sales outlets to manufacturing establishments, and previous experiences in public or private regulation.

Preparation for Self-Government. Organization in American Industry was immature prior to N.R.A., as a result, largely, of the ever-present threat of prosecution under the anti-trust laws. The brief experience of the War Industries Board occurred during a period of prosperity and expansion, not comparable to the depression problems which faced N.R.A. Self-government in industry by trade associations was with few exceptions poorly developed, due to the constant suspicion that such organizations were engaged in combination in restraint of trade.

Co-operation between trade associations and the government since the War, as in export combinations and in connection with commercial standards, simplified practice agreements and trade practice conferences, was a step in the direction of self-government. However, association activities were entirely dependent on the voluntary cooperation of industry members. When the N.R.A. delegated important quasi-public responsibilities to some associations under the name of code authorities, most of them were poorly equipped, both financially and by past experience, to assume the heavy responsibilities of administration.

This study has not gone into the controversial question whether the organization of industry is conducive to economic welfare, but aims merely to ascertain what economic factors contribute to organizability. The geographical, the financial, the labor and the other characteristics that tend to organizability is an old field of inquiry; but now for the first time the experience of two years under N.R.A. make it possible to assess the accomplishments of various types of industry in the effective administration of codes.

On the basis of data tabulated by the N.R.A. Compliance Division and the Division of Review, 100 coded industries were rated by their adherence to: (1) labor compliance, (2) trade practice compliance, (3) code financial administration, (4) the representative character of the code authority, (5) the industry attitude toward the code, and (6) statistical reporting systems.

A combination of these six criteria yields an index of effective administration for each of the 100 codes, which is of interest not for any one industry but for the comparison of geographic areas, or with respect to the unionization of industry.

Economic Factors of Organizability. One hundred industries were examined on the basis of twelve standard economic factors and compared by cross analysis with the index of effective code administration. No one characteristic is the key to the type of industry adapted to a code, since

the factors that operate in business life are complex.

Industries possessing the following characteristics appear to tend to effective self-government under codes: geographic centralization; unified financial control; basic economic processes; absence of contract systems; declining profits over long periods; unionization; mechanization; sales outlets to manufacturing establishments; previous experiences in public or private regulation.

Conversely, industries that have the opposite characteristics, such as decentralization, widely diffused ownership, sales outlets to retailers or consumers, etc., tend to be less organizable.

The size of the coded industry, the wage level prevailing prior to N.R.A. and the fact of location in large cities apparently had no influence, positive or negative, on organization. Several of the distributive and service industries, which are among the least organizable, qualify as large urban groups and have paid relatively high wages.

The chief surprise resulting from the analysis of these twelve factors is the failure of large industries to record any greater degree of organizability than the smaller ones.

However, expectations of the kind had no factual foundation prior to N.R.A., since no experience in self-government on a large scale was available for detailed examination. This comparison of the economic factors in industry with effective code administration, therefore, provides the first material for testing organizability.

The lessons of two years experience under N.R.A. point to the incapacity of some classes of industries to develop unity of interest among their members. Delegation of powers of self-government under Code Authorities to such industries is futile. A combination of basic economic factors, flexibly applied, will assist in workable standards for determining industrial eligibility to Codes.

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ORIGIN OF THE CODE AUTHORITY

Preliminary Summary of Findings

The great changes in industry in recent years have made the adoption of a more effective system of industrial regulation essential. Since business leaders were confident that industry could best regulate itself in the public interest, and since a relaxation of the anti-trust laws had been successful in stimulating industry during the World War, it was a logical method of attack upon the industrial crisis of 1933 to adopt the theory of the self-government of industry under Government regulation.

TRADE ASSOCIATION BACKGROUND

The trade association movement, since its inception in the latter part of the nineteenth century, has epitomized industry's attempts to achieve self-government.

Activities of trade associations in the nineteenth century, in restricting competition and raising prices, contributed largely to the passage of the anti-trust laws. The anti-trust laws have in the meantime been unsuccessful in effectuating free competition and in stopping the tendency to centralization in industry. The Government's failure to enforce such laws uniformly and to clarify their meaning has kept industry in a continual state of uncertainty as to legitimate methods of self-control, and has often resulted in the continuation of destructive trade practices.

Passage of the Recovery Act gave trade associations a long awaited opportunity to organize industries and to prove that their members, if permitted to work in concert under Government sanction, could rectify unfair industrial practices and improve the condition of labor.

FUNCTIONS PERFORMED BY TRADE ASSOCIATIONS

Trade associations in the nineteenth century were principally concerned with restricting competition and controlling prices, but such activities were eventually discouraged by the anti-trust laws. In the twentieth century trade associations, turning their attention to more legal practices, have contributed much to the improvement of business conditions through cooperative action among industry members.

Trade associations played the predominant part in organizing industries to present codes to the Administration.

CONCEPT OF INDUSTRIAL SELF GOVERNMENT

The traditional American policy of laissez-faire, even with the support of the anti-trust laws, has not resulted in actually free competition.

The conception of industrial self-government under Government supervision embodied in the National Recovery Act was not a revolutionary principle, but followed substantially the policy pursued by the Government for some years through the Federal Trade Commission

DEVELOPMENT OF THE CODE AUTHORITY

Any definite concept of Code administration was slow in developing, the early emphasis of N.R.A being entirely upon Code formulation.

Trade associations were chiefly relied upon to serve as Code administrative agencies during the first stages of N.R.A. In the later stages independent Code Authorities won favor for the purpose.

The National Recovery Administration had no preconceived notions as to the functions to be performed by industrial agencies. They first served as planning agencies with very limited powers. Later wide discretionary powers, unfettered by Government supervision, were granted them. However, as the N.R.A. entered its later stages, the discretionary powers of Code agencies were subject to strict supervision.

STATISTICAL AND RESEARCH ACTIVITIES OF CODE AUTHORITIES

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STATISTICAL AND RESEARCH ACTIVITIES OF CODE AUTHORITIES

Preliminary Summary of Findings

The present findings with regard to the statistical and research activities of code authorities are based upon the experience of fifty industries. This sample includes code authorities, the quality of whose statistical and research work ranged from non-existent or poor to excellent. It is also representative of the whole range of industry, with respect to the number and size of the members, the number of employees, the geographical distribution, and the types of product.

In industry taken as a whole the statistical and research activities of code authorities were superior as regards both quality and quantity to those of trade associations prior to the NRA. There were of course individual exceptions. In some cases in which excellent work had been done by associations the quality was not improved under the codes, though the quantity was generally increased. In some industries, moreover, in which statistical work on the part of associations had been entirely lacking prior to the N.R.A., such work was not undertaken by the code authorities.

The activities of code authorities in the way of statistics and research showed wide variations both in quality and in quantity.

The statistical and research work of trade associations since the termination of the codes has been on the whole inferior both in quality and in quantity to those of the code authorities. In some cases, of courses, there has been reduction of quantity without impairment of quality, except as regards the proportion of the industry covered; and in others, where statistical and research activity on the part of the code authorities was non-existent, no reduction has been possible.

The experience of code authorities, judged from the fifty industries covered by the present study, indicates many reasons for the gaps and defects that existed in their statistical and research activities.

The problem of collecting and compiling industrial statistics did not cease to exist with the termination of the codes; and its solution is not necessarily dependent on the enactment of legislation establishing any kind of "second N.R.A." Statistical and research work in the industrial field is now being carried on, subject to various shortcomings both by trade associations and by government bureaus. Because adequate statistics are essential to the welfare of industries, because they are needed by the government for administrative purposes, and because they are widely desired by the general public, there should be improvement in the facilities for collecting, compiling and presenting them.

Some think that the work of the Federal government with respect to industrial statistics should be expanded until all such information that is needed for administrative purposes becomes available from government sources. Others propose that the statistics collected by the Federal Government should include also those demanded by the general public, and

possibly also those needed for the guidance of members of industry in conducting their business.

Some think that these ends could be achieved by the voluntary reporting of statistics, which would ordinarily result in data for a sample of an industry rather than for the industry as a whole. Others feel that compulsory collection by the Federal government would be necessary, if satisfactory results are to be obtained. Some think that the work should be distributed among the government bureaus now engaged in the collection of industrial data; others believe that it would be necessary to have concentration in one central Federal agency of all government activities relating to industrial statistics.

Some persons familiar with the problems of industrial statistics feel that it would be advisable, in the case of trade associations which are satisfactorily conducting statistical and research activities, to arrange voluntary cooperation with the Federal government, by which association data would be accepted as a substitute for government collection.

The writer believes that statistical and research activities in the industrial field could be brought to the highest level both of quality and of quantity under a plan of compulsory reporting to trade associations, supervised by the Federal government.

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